



Australian  
Competition &  
Consumer  
Commission

# **Migration Plan Required Measures**

Discussion Paper

November 2012

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# List of acronyms and other terms

ACCC	Australian Competition and Consumer Commission
August 2011 Discussion Paper	<i>ACCC's Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan</i> , Discussion Paper, August 2011
CCA	<i>Competition and Consumer Act 2010</i>
DBCDE	The Department of Broadband, Communications and the Digital Economy
(the) Determination	<i>Telecommunications (Migration Plan Principles) Determination 2011</i>
Final Decision Paper	<i>ACCC's Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan</i> , Final Decision Paper, February 2012
HFC	Hybrid Fibre-Coaxial
NBN	National Broadband Network
NBN Co	NBN Co Limited
NBN ISP	NBN Information Security Plan
RSP	Retail Service Provider
SSU	Structural Separation Undertaking
Telstra	Telstra Corporation Limited
TUSMA Agreement	<i>The Telecommunications Universal Service Management Agency (TUSMA) Agreement</i> concluded on 23 June 2011 between Telstra and the Commonwealth
WBA	Wholesale Broadband Agreement

# Contents

<b>1. Overview .....</b>	<b>1</b>
1.1 Introduction.....	1
1.2 Regulatory Context.....	1
1.3 Submission of the Required Measures .....	3
<b>2 Consultation.....</b>	<b>5</b>
2.1 Overview.....	5
2.2 Making a Submission .....	5
<b>3 NBN Information Security Plan (Required Measure 6).....</b>	<b>6</b>
3.1 Overview.....	6
3.2 Regulatory Requirements .....	7
3.3 Issues for Comment .....	8
<b>4 Required Measures 2, 3 and 4.....</b>	<b>15</b>
4.1 An Overview of the Migration Process .....	15
4.2 Managed Disconnection of Copper and HFC Services .....	16
4.3 Building Copper Paths to Supply Special Services and Special Service Inputs.....	16
<b>Attachment A – Required Measures and Relevant Migration Plan Principles and Migration Plan Clauses .....</b>	<b>18</b>
<b>Attachment B – Draft NBN ISP Clauses Mapped to Requirements within Schedule 6 of the Migration Plan .....</b>	<b>20</b>

# 1. Overview

## 1.1 Introduction

On 27 February 2012, the ACCC accepted Telstra's structural separation undertaking (SSU) and approved the draft migration plan. The SSU came into force on 6 March 2012 and the migration plan on 7 March 2012.

The migration plan sets out the processes that Telstra will follow when disconnecting premises from its copper or Hybrid Fibre-Coaxial (HFC) networks for the purpose of migration to the national broadband network (NBN). These processes will generally be business as usual processes and standard industry practices,<sup>1</sup> to the extent that these continue to fulfil the migration plan principles.<sup>2</sup> NBN Co has primary responsibility for the process of connecting services to the NBN fibre network. Retail service providers (RSPs), including Telstra, will need to manage their own customer bases to ensure that services are appropriately migrated.<sup>3</sup>

Further detail on the ACCC's assessment of Telstra's migration plan can be found in the ACCC's August 2011 discussion paper—*Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan*, and in its February 2012 Final Decision paper. Both papers are available at <http://www.accc.gov.au/content/index.phtml/itemId/1003999>.

## 1.2 Regulatory Context

Clause 5 of the migration plan provides that Telstra may develop certain disconnection measures or processes after the migration plan commences and submit them to the ACCC for approval.<sup>4</sup> These measures are referred to as 'required measures', which comprise specific disconnection processes needed to facilitate migration to the NBN and a plan setting out how Telstra will ensure that information sourced from NBN Co under the Definitive Agreements is secured from retail business units. There are six required measures:

- (1) Processes for Telstra to obtain relevant consents and releases from wholesale customers and provide relevant notice to wholesale customers associated with pull through activities by NBN Co (which Telstra will lodge as two separate measures).
- (2) Process for managed disconnection of copper services (which are not special services) on the disconnection date.
- (3) Process for managed disconnection of HFC services.

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<sup>1</sup> Migration plan, clause 6.

<sup>2</sup> The migration plan principles are contained in the *Telecommunications (Migration Plan Principles) Determination 2011*.

<sup>3</sup> Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan, Discussion Paper, 30 August 2011, p. 128.

<sup>4</sup> Migration plan, clause 5.1(c).

- (4) Process for Telstra to build copper paths at premises which had previously been permanently disconnected, in order to supply special services and special service inputs to that premises.
- (5) Processes which will be used to manage and implement disconnection of copper services of each special service class.
- (6) The NBN information security plan (NBN ISP).<sup>5</sup>

The ACCC must approve a draft required measure if it is satisfied that it complies with the migration plan principles. The ACCC must also have regard to the costs to Telstra, the effectiveness of the proposed measure and the costs and benefits of not approving a particular proposal in its decision.<sup>6</sup> The migration plan provides further detail as to what certain required measures must include. However, the ACCC must ultimately be satisfied that the required measures comply with the migration plan principles in order to approve them. If, through operational experience or otherwise, an approved required measure is found to not comply with the general migration plan principles (see below), then the ACCC may issue a direction to Telstra to rectify the required measure to ensure that it is compliant.<sup>7</sup>

The ACCC has discretion to undertake public consultation on the draft required measures.<sup>8</sup> The ACCC has 60 business days from the date of lodgement to approve a required measure, or otherwise direct Telstra to resubmit an amended draft. Telstra has 40 business days from receipt of such a direction to resubmit the draft required measure that addresses the concerns raised by the ACCC. These processes apply recursively.<sup>9</sup> Once approved, a required measure is deemed to form part of the migration plan.<sup>10</sup>

### 1.2.1 Migration plan principles

The migration plan principles define the objectives and scope of the migration plan and are found in the *Telecommunications (Migration Plan Principles) Determination 2011* (the Determination).<sup>11</sup> There are three different types of principles:

- General principles, which describe the overarching principles that must be met by the migration plan. These include equivalence and continuity of service objectives.
- Specific principles, which provide further specificity regarding how some of the general principles are to be given effect in the migration plan.
- Procedural principles, which set out the procedural provisions that must be included in the migration plan.<sup>12</sup>

<sup>5</sup> Migration plan, sch. 7.

<sup>6</sup> Migration plan, clause 28.2.

<sup>7</sup> Migration plan, clause 26.

<sup>8</sup> Migration plan, clause 5.4(b).

<sup>9</sup> Migration plan, clause 5.4(e).

<sup>10</sup> Migration plan, clause 5.4(g).

<sup>11</sup> Available on the Department of Broadband, Communications and Digital Economy's website at [www.dbcde.gov.au](http://www.dbcde.gov.au).

<sup>12</sup> *Telecommunications (Migration Plan Principles) Determination 2011*, s. 6(1).

In its assessment of Telstra's draft migration plan, the ACCC considered each clause against the general, specific and procedural principles.<sup>13</sup> The ACCC must assess the draft required measures in the same way.

This consultation process relates to required measures 2, 3, 4 and 6. To assist interested parties to comment on these required measures, a table mapping each required measure to the most relevant principles is attached to this discussion paper (**Attachment A**).

### **1.3 Submission of the Required Measures**

The migration plan sets out the process that Telstra must follow when developing and lodging draft required measures for ACCC approval. This process requires the development of a high level road map and individual work plans for each measure. These documents are available on the [Telstra wholesale website](#).<sup>14</sup>

Telstra lodged initial drafts of required measures 2, 3, 4 and 6 with the ACCC by the deadline of 7 September 2012. The ACCC considered these initial drafts and formed the view that amendments were required prior to undertaking consultation. In October 2012, Telstra withdrew and resubmitted drafts of these required measures together with supporting submissions outlining why Telstra considers that each required measure complies with the principles.

The ACCC granted Telstra an extension to lodge required measure 1(b) by 30 November 2012.<sup>15</sup> Once lodged, the ACCC proposes to undertake public consultation on required measures 1(a) and 1(b) together. Required measure 5 will not be needed until the disconnection dates for special services are confirmed.

Copies of the draft required measure and supporting submissions are available on the ACCC website: <http://www.accc.gov.au/content/index.phtml/itemId/1082236>.

#### **1.3.1 Telstra's consultation on the required measures**

As part of the process for developing the required measures Telstra consulted NBN Co.

Telstra also consulted with its wholesale customers on required measures 2, 3 and 4. Only one wholesale customer commented on required measures 2 and 4. No feedback was provided on required measure 3 as it relates to the managed disconnection of Telstra's HFC services which will not affect Telstra's wholesale customers.

Telstra did not consult wholesale customers on required measure 6, principally because the ACCC committed to do so in response to concerns raised by wholesale customers through the migration plan consultation process.<sup>16</sup>

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<sup>13</sup> *Telecommunications (Migration Plan Principles) Determination 2011*, s. 7(1).

<sup>14</sup> [www.telstrawholesale.com.au/nbn/migration-plan/index.htm](http://www.telstrawholesale.com.au/nbn/migration-plan/index.htm).

<sup>15</sup> More specifically, required measure 1(b) notification to wholesale customers of pull through exception events.

<sup>16</sup> ACCC's Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan, Final Decision Paper, February 2012, p.105.

Further information on Telstra's consultation is available on the [Telstra Wholesale website](#).<sup>17</sup>

Telstra prepared a confidential summary of the feedback it received from wholesale customers as well as Telstra's response to each concern. Telstra provided this summary document to the ACCC on a confidential basis. The ACCC has considered this confidential summary document in the preparation of this consultation paper.

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<sup>17</sup> [www.telstrawholesale.com.au/nbn/migration-plan/index.htm](http://www.telstrawholesale.com.au/nbn/migration-plan/index.htm).



## 2 Consultation

### 2.1 Overview

The ACCC is seeking feedback from interested parties on draft required measures 2, 3, 4 and 6. In particular, the ACCC is seeking responses from Telstra wholesale customers and industry participants on whether the draft required measures comply with the migration plan principles.

The primary focus of this discussion paper is on the draft NBN ISP (required measure 6) as wholesale customers have not been consulted as part of the development of this draft required measure. Given the importance of ensuring that Telstra does not gain an unfair commercial advantage from any information that Telstra receives from NBN Co for the purposes of migration, the discussion paper draws out some specific issues relating to the likely effectiveness of the draft NBN ISP that the ACCC would welcome feedback on. These issues are explored in section 3 below.

### 2.2 Making a Submission

Submissions in response to this discussion paper will be accepted until **5:00 pm on 14 December 2012**. Any submissions received after this time may not be considered.

All submissions will be considered public and posted on the ACCC's website. If stakeholders wish to submit commercial-in-confidence material to the ACCC they should submit a public and a commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or '[c-i-c]'.

The *ACCC-AER information policy: the collection, use and disclosure of information* sets out the general policy of the ACCC and the Australian Energy Regulator (AER) on the collection, use and disclosure of information. A copy of the guideline can be downloaded from the ACCC website at [www.accc.gov.au](http://www.accc.gov.au).

The ACCC prefers to receive electronic copies of submissions in either Adobe PDF or Microsoft Word format that is text searchable. Please send submissions to the following email address: [ssu-migration@acc.gov.au](mailto:ssu-migration@acc.gov.au). The ACCC also accepts hard copies of submissions. Any hard copy should be sent to:

Sean Riordan  
General Manager  
Industry Structure and Compliance, Communications Group  
Australian Competition and Consumer Commission  
GPO Box 520, Melbourne VIC 3001

Any questions about this consultation process should be directed to Evan Marginson at [evan.marginson@acc.gov.au](mailto:evan.marginson@acc.gov.au) or by calling: (03) 9658 6416.

## 3 NBN Information Security Plan (Required Measure 6)

### 3.1 Overview

Under the Definitive Agreements between Telstra and NBN Co, NBN Co will provide Telstra with a range of information that is of potential commercial value, for the purposes of the commencement of supply of fibre services or the disconnection of Telstra's copper or HFC services.<sup>18</sup> The two principal Definitive Agreements in this regard are:

- (1) The Subscriber Agreement, which sets out the arrangements governing Telstra's disconnection of premises from its copper and HFC services for the purposes of NBN migration.
- (2) The Infrastructure Services Agreement, which contains the terms on which Telstra will provide long term access to infrastructure and services required by NBN Co for the deployment and operation of the NBN fibre network. This includes access and use of Telstra dark fibre, exchanges, ducts and lead-in-conduits.

Inappropriate use or disclosure of this information within Telstra could allow Telstra to gain an unfair commercial advantage over its wholesale customers in the migration of customers to the NBN. For this reason, it is important for Telstra to put in place effective information security measures to ensure that it does not obtain an unfair commercial advantage as a result of its unique role in the NBN migration process.

#### 3.1.1 Lodgement of the draft NBN ISP

Telstra submitted draft required measure 6 and a supporting submission to the ACCC on 16 October 2012.

The draft NBN ISP has been constructed around a 'systems-based' framework that limits access to defined categories of NBN Co migration information to personnel who need to know the information for the purposes of their role. These arrangements are supported by further access restrictions on retail business unit staff and compliance and reporting commitments. The draft NBN ISP also includes an overarching commitment to protect any information that is provided to Telstra through the NBN Interface Group—a group to be established for the purpose of managing information flows and implementing relevant systems controls.

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<sup>18</sup> For further discussion of the aspects of the agreements relating to NBN migration please refer to Chapter 13 of *ACCC's Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan*, Discussion Paper, August 2011.

## 3.2 Regulatory Requirements

The ACCC must assess the draft NBN ISP against the regulatory framework established by section 29 of the Determination. Clause 24 and Schedule 6 of the migration plan provide greater detail on how Telstra will fulfil the migration plan principles.

### 3.2.1 Migration plan principles

Section 29 of the Determination provides that the migration plan must set out effective measures to ensure that any information that Telstra receives from NBN Co for the purposes of:

- (a) the commencement of supply of fibre services; or
  - (b) disconnecting fixed-line carriage services using a separating network at premises in a fibre rollout region;
- cannot be used to gain an unfair commercial advantage over Telstra's wholesale customers.

### 3.2.2 Migration plan requirements

Clause 24.2 of the migration plan commits Telstra to ensure that any 'NBN Co migration information' is not used or disclosed by Telstra to gain or exploit an unfair commercial advantage over Telstra's wholesale customers. NBN Co migration information is defined as:

[A]ny document, materials, data, or tangible item, or any information in some other form, which is disclosed by or on behalf of NBN Co to Telstra under the Definitive Agreements for the purposes of:

- (a) the connection by NBN Co or its Personnel of Premises and commencement of supply of Fibre Services using the NBN Co Fibre Network; or
- (b) disconnecting carriage services from a Separating Network at Premises within the Fibre Footprint in a Rollout Region.<sup>19</sup>

Clause 24.1(c) to (k) of the migration plan lists types of information that are not NBN Co migration information.

Schedule 6 of the migration plan prescribes a number of objectives that the NBN ISP must meet. In particular, the NBN ISP must set out measures and processes that:

- Ensure that NBN Co migration information is only disclosed to, and made available for use by, authorised personnel for a purpose permitted or required by the Definitive Agreements.
- Identify the security measures to be implemented on Telstra's information storage systems and data systems to ensure that there is no unauthorised disclosure of NBN Co migration information.
- Provide that NBN Co migration information will only be disclosed to authorised

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<sup>19</sup> Migration plan, clause 24.1.

personnel and on a strictly ‘need to know’ basis.

- Establish the appropriate and effective processes that Telstra will put in place to identify and authorise personnel and ensure that such personnel or pre-approved roles or groups only use NBN Co migration information in accordance with the NBN ISP.
- Establish and document the roles and/or teams within Telstra that will use and disclose particular categories of NBN Co migration information.
- Specify that NBN Co migration information will not be made available to Retail Business Units.
- Specify effective mechanisms to monitor compliance with the NBN ISP and appropriate periodic reporting to the ACCC.
- Specify programs and policies that Telstra will use to educate relevant personnel about the requirements of the NBN ISP and ensure compliance with the NBN ISP.

For reference, the ACCC has attached a table mapping each requirement of Schedule 6 to corresponding clauses in the draft NBN ISP (**Attachment B**).

### 3.3 Issues for Comment

In light of the competitive harm that may arise from ineffective information security arrangements, the ACCC seeks views from interested parties on the following question:

*1. Does the draft NBN ISP comply with the requirements of the migration plan principles and migration plan? If not, in what way does it not comply?*

In particular, the ACCC seeks feedback on each of the following issues:

- The scope of NBN Co migration information protected under the NBN ISP.
- The processes and measures for use and disclosure of NBN Co migration information, including allowances for retail staff to access lead-in-conduit information.
- Wholesale customer concerns raised in response to the ACCC’s August 2011 discussion paper on the SSU and migration plan.

### 3.3.1 The scope of NBN Co migration information protected under the NBN ISP

#### Category based approach and exclusions

The NBN ISP must provide a description of the type of NBN Co migration information that Telstra receives from NBN Co and is therefore subject to the NBN ISP.<sup>20</sup> As noted above, the scope of the information covered by the NBN ISP comprises any information that Telstra receives from NBN Co for the purposes of the commencement of supply of fibre services; or disconnecting fixed-line carriage services using a separating network at premises in a fibre rollout region.<sup>21</sup>

#### *Relevant provisions of the draft NBN ISP*

Draft clause 5.1(c) defines the scope of NBN Co migration information by reference to the categories of information set out in Schedule 1. These categories relate to specific types of information that will be provided to Telstra by NBN Co under the Subscriber Agreement and Infrastructure Services Agreement.<sup>22</sup>

Draft clause 5.2 and Schedule 1 specify the types of information that are not within the scope of the NBN ISP. Notable in this regard is draft paragraph 1(d)(iii) of Schedule 1 and draft clause 5.2(b) (see discussion below).

#### *Discussion of the relevant provisions of the draft NBN ISP*

Telstra has explained its ‘category based’ approach to defining the scope of NBN Co migration information in its supporting submission:

Telstra considers that this definition (clause 24.1 of the migration plan) does not capture information which is not related to connection of Premises to the NBN or the disconnection of Premises from a Separating Network and does not identify the location of such Premises or the timing of connection from disconnection.<sup>23</sup>

It is on this basis that Telstra has excluded information such as “backhaul arrangements or reservations of exchange space, information concerning dark fibre links...or long term forecasts of NBN Co’s infrastructure requirements, specifically in respect of rack space and dark fibre links” from the scope of the draft NBN ISP.<sup>24</sup>

In addition, Telstra has stated in its supporting submission that:

[I]nformation concerning exchanges and the Transit Network is too far removed from the connection of premises and commencement of supply of fibre services, or disconnection of premises, such that it does not fall within the definition of NBN Co Migration Information.<sup>25</sup>

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<sup>20</sup> Migration plan, sch.6, para. 2(b)(i).

<sup>21</sup> Migration plan, clause 24.1.

<sup>22</sup> Draft NBN ISP, sch. 1, para. 2.

<sup>23</sup> Telstra’s supporting submission regarding the draft NBN ISP, p. 4.

<sup>24</sup> Draft NBN ISP, Sch.1, para. 1(d)(iii).

<sup>25</sup> Telstra’s supporting submission regarding the draft NBN ISP, p. 4.

The ACCC considers that such information would likely be disclosed by NBN Co to Telstra for the purposes of commencement of supply of fibre services using the NBN Co Fibre Network, to the extent that the relevant infrastructure enables the supply of NBN fibre services.

Further, this information would appear to be of commercial value. For example, information relating to rack space reservations could potentially be used to make a more granular assessment of where and when NBN Co may be intending to commence supply of fibre services. This may potentially enable Telstra to engage in more targeted marketing of services than would otherwise be possible if Telstra were solely reliant on the rollout information to be published by NBN Co. As a result, the exclusion of certain information from the scope of the NBN ISP may not comply with the definition of NBN Co migration information in the migration plan principles and under clause 24.1 of the migration plan.

2. *Is the scope of the information captured by the draft NBN ISP consistent with the scope of the definition of NBN migration information provided under section 29 of the Determination?*
3. *What competitive harm might a wholesale customer suffer should the NBN ISP not cover the information provided by NBN Co to Telstra under the Definitive Agreements for the purposes of:*
  - *backhaul arrangements*
  - *reservations of exchange space*
  - *dark fibre links*
  - *rack spaces*
  - *and other information provided by NBN Co for the purpose of ordering or forecasting demand for infrastructure to be used by NBN Co in supplying NBN fibre services?*

#### *Publication of information by NBN Co*

NBN Co has committed to publish a substantial amount of information concerning the rollout of the NBN. For example, information concerning the timing and location of connection of premises (such as the 1 year and 3 year rollout forecasts) and the ‘ready for service’ dates for each rollout region. The manner and scope of how this information will be communicated to NBN access seekers is outlined in NBN Co’s [Access Seeker Communications pack](http://www.nbnco.com.au/getting-connected/service-providers/network-rollout.htm).<sup>26</sup>

<sup>26</sup> Available at <http://www.nbnco.com.au/getting-connected/service-providers/network-rollout.htm>

On the basis of these commitments from NBN Co, clause 5.2(b) of the draft NBN ISP states that:

[A]ny information which NBN Co makes available to access seekers or publishes on its website will not be NBN Co Migration Information from the time it is made available to access seekers or published by NBN Co.<sup>27</sup>

In its supporting submission, Telstra states that its current intention is to use only the information released publicly by NBN Co or provided by NBN Co to other service providers in furtherance of Telstra's activities as an RSP over the NBN, rather than the information provided to Telstra by NBN Co under the Definitive Agreements.<sup>28</sup> However, this exact commitment is not reflected in the draft NBN ISP. The ACCC considers that reflecting this commitment in the NBN ISP would provide greater assurance that Telstra will not be able to use NBN Co migration to gain an unfair commercial advantage over Telstra wholesale customers.<sup>29</sup>

### **Overarching commitment to protect information**

Clause 5.1(d) of the draft NBN ISP contains an overarching commitment to protect information provided to Telstra through the NBN Interface Group or otherwise in accordance with an interaction protocol under the Definitive Agreements. The NBN Interface Group was established by Telstra in accordance with draft clause 7 of the NBN ISP. Its general purpose is to implement and manage Telstra NBN ISP commitments. It cannot form part of a retail business unit or have retail business unit staff working in it.<sup>30</sup>

Telstra has stated that the effect of the overarching commitment will be that the information security arrangements will apply "even where that information has not yet been identified and included as a category of NBN Co Migration Information."<sup>31</sup> The corollary to this is that the overarching commitment does not appear to protect information that Telstra has identified as falling outside the scope of NBN Co migration information, such as the information described in draft paragraph 1(d)(iii) of Schedule 1.

4. *Does the overarching commitment in clause 5.1(d) of the draft NBN ISP provide sufficient reassurance that the objectives of the NBN ISP can be met? If not, what further clarification or commitment is needed to ensure that this is the case?*

<sup>27</sup> Draft NBN ISP, clause 5.2(b).

<sup>28</sup> Telstra's supporting submission regarding the draft NBN ISP, p 4.

<sup>29</sup> Migration plan, Sch.6, para 1(a)(ii).

<sup>30</sup> Draft NBN ISP, clause 7(c).

<sup>31</sup> Telstra's supporting submission regarding the draft NBN ISP, p. 5.

### 3.3.2 Whether the processes and measures for use and disclosure of NBN Co migration information, including for retail staff, are appropriate and effective

#### General approach to use and disclosure of NBN Co migration information

NBN Co migration information must only be disclosed to, and made available for use or disclosure by authorised personnel; and on a strictly ‘need to know’ basis.<sup>32</sup> The ‘need to know’ principle is defined by reference to whether particular Telstra personnel require the information for the purpose of “performing an agreement with NBN Co” and either “facilitating connection of premises and commencement of supply” or “disconnecting carriage services”.<sup>33</sup>

Clause 9 of the draft NBN ISP gives effect to the ‘need to know’ principle by way of ‘user access controls’ for authorised personnel.<sup>34</sup> While the commitments generally appear to mirror the language of Schedule 6 of the migration plan, in certain instances they do not. For example, draft clause 9.1(c) states that:

[T]he ‘need to know’ principle means that the default position under Telstra’s information systems is that Personnel within Telstra do not have access to information systems containing NBN Co Migration Information unless access to the information system is reasonably necessary in order for those Personnel or groups to perform their duties effectively...

The clause then lists a number of duties relating to the implementation of Telstra’s Definitive Agreement commitments. However, these duties do not appear to be exhaustive due to the use of the word ‘including’. Further, the phrase “reasonably necessary in order....to perform their duties effectively”<sup>35</sup> introduces some uncertainty into the scope of the permitted use and disclosure. These subjective qualifiers reduce the strength of the commitment and may permit non-compliance. As a general rule, the ACCC prefers objective compliance measures to ensure compliance can be readily monitored and assured.

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| <p>5. <i>Do the process and measures provided under clause 9 of the draft NBN ISP comply with the requirements of the migration plan and the migration plan principles?</i></p> <p>6. <i>Having regard to the need for some flexibility to facilitate the NBN rollout, could clause 9.1(c) more clearly define when Telstra personnel may use NBN Co migration information?</i></p> |
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<sup>32</sup> Migration plan, sch.6, para. 3.1(a).

<sup>33</sup> Migration plan, sch.6, para. 3.1(b).

<sup>34</sup> The ‘user access controls’ are outlined under Schedule 3 of the draft NBN ISP, paragraph 4 of which identifies the proposed groups and roles of authorised personnel that will be permitted to access information systems containing NBN Co migration information.

<sup>35</sup> Draft NBN ISP, clause 9.1(c).



### **Retail business unit staff access to lead-in-conduit information**

The NBN ISP must specify that NBN Co migration information will not be disclosed to or made available for use by Telstra retail business units.<sup>36</sup> The NBN ISP may specify an exception to this general rule for a purpose approved by the ACCC.<sup>37</sup>

As premises are connected to the NBN, NBN Co will inform Telstra of where it will be taking possession of the lead-in-conduit.<sup>38</sup> Clause 10(f)(i) of the draft NBN ISP provides that retail personnel may access information concerning the ‘Lead-in-Conduit Access Service’<sup>39</sup> on the basis that they do not use the information for, among other things, “marketing, promoting or selling carriage services” to non-Telstra customers.<sup>40</sup> However, this information may still confer an advantage to Telstra with respect to marketing to end-users that currently acquire a service from Telstra.

The ACCC notes Telstra’s view that knowing whether NBN infrastructure has been installed at a premise will assist in ensuring that Telstra can respond appropriately to reported service faults. In particular, Telstra has indicated that it will be important for retail staff to know this as it will indicate whether it is NBN Co or Telstra that is responsible for fixing faults involving the lead-in-conduit at premises. However, for those limited services that are affected by faults arising from or involving the lead-in conduit, it would appear that the end-user will be well placed to advise the relevant Telstra representative as to whether the NBN infrastructure has in fact been installed. It is unclear whether the NBN lead-in conduit information is needed for this purpose.

7. *Is the exception for ‘Lead-in-Conduit Access Service’ information consistent with the requirements of the migration plan and migration plan principles?*

### **Application of the NBN ISP to personnel in Telstra wholly owned subsidiaries**

The ACCC notes that the draft NBN ISP does not identify what information security arrangements will apply to staff engaged to work for any wholly owned subsidiaries of Telstra.

<sup>36</sup> Migration plan, sch.6, para 3.3.

<sup>37</sup> Migration plan, sch.6, para. 3.3(a)(ii).

<sup>38</sup> Provided to Telstra pursuant to Access Module 2 of the Infrastructure Services Agreement.

<sup>39</sup> Item 2.3 of Schedule 1 of the draft NBN ISP describes Lead-in-Conduit Access Service information as information relating to the location and any other characteristics of the lead-in-conduit prior to its handover to NBN Co.

<sup>40</sup> Draft NBN ISP, clause 10(f)(i)(A) and (C).

### **3.3.3 Whether the NBN ISP addresses wholesale customer concerns raised in response to the ACCC's August 2011 discussion paper**

In its August 2011 discussion paper on the draft migration plan, the ACCC sought feedback on whether Schedule 6 of the draft plan was consistent with the requirements of section 29 of the Determination and whether commitments to include any other features in the ISP should be specified.<sup>41</sup> In response, Optus and AAPT raised a number of concerns. The ACCC committed to consider these concerns in its assessment of the draft NBN ISP.<sup>42</sup>

Some of these concerns have been raised in the preceding discussion. The following section discusses one issue that the ACCC considers may warrant further attention in order for the ACCC to be satisfied that the NBN ISP complies with the regulatory requirements.

#### **Security measures for the handling of non systems based NBN Co migration information**

AAPT suggested that “more detail and assurances are required about the security measures and controls for the handling of both electronic and hard copies of NBN Co Migration Information.”<sup>43</sup> The draft NBN ISP is designed around the security measures to control access to Telstra's information storage and data systems that will house NBN Co migration information. Clause 9.1(b) of the draft NBN ISP commits Telstra to ensure that NBN Co migration information that is used or disclosed other than through an information system to which the user access control requirements apply (for example, where NBN Co provides Telstra with an electronic or physical copy of a record) will not be used or disclosed to any person, other than to Authorised Personnel and on a ‘need to know’ basis.

The draft NBN ISP does not go into specific detail on information handling arrangements that Telstra will use to deliver on this commitment. However, it does commit Telstra to provide training to clarify that the prohibitions on unauthorised disclosure “apply in respect of NBN Co migration information in all material forms, including electronic and physical copies of such information”.<sup>44</sup>

8. *Is the level of detail on the information handling arrangements for non-systems based NBN Co migration information consistent with the requirements of the migration plan principles and migration plan?*

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<sup>41</sup> ACCC's Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan, Discussion Paper, August 2011, p. 157.

<sup>42</sup> ACCC's Assessment of Telstra's Structural Separation Undertaking and draft Migration Plan, Final Decision Paper, February 2012, p. 105.

<sup>43</sup> Submission by AAPT Limited (27 September 2011), in response to ACCC discussion paper p. 12.

<sup>44</sup> Draft NBN ISP, sch. 4.

## 4 Required Measures 2, 3 and 4

### 4.1 An Overview of the Migration Process

The disconnection protocols<sup>45</sup> set out the key commercial commitments that Telstra and NBN Co have agreed to in regards to disconnection of Telstra's copper and HFC network. With a few exceptions, these arrangements require Telstra to disconnect all premises within an NBN rollout region by the disconnection date, which is 18 months after NBN Co declares that region 'ready for service'.

The commencement of supply of fibre services to end-users will depend upon RSPs placing orders for NBN Fibre Access Services with NBN Co on behalf of their end-users. RSPs will be able to place orders with NBN Co from the 'ready for service' date, with the intention that end-users will migrate to the NBN and submit an order to disconnect their copper services before the disconnection date. Telstra will generally be using existing business as usual processes to disconnect premises.<sup>46</sup>

#### 4.1.1 The need for new operational processes

Schedule 7 of the migration plan outlines a number of new or modified operational processes and systems that Telstra must implement in order to meet its disconnection obligations.

Telstra must submit these processes to the ACCC for approval:

- Process for managed disconnection of copper services (which are not special services) on the disconnection date (required measure 2).
- Process for managed disconnection of HFC services (required measure 3).
- Processes for Telstra to build copper paths at premises which had previously been permanently disconnected, in order to supply special services and special service inputs to that premises (required measure 4).

The efficacy of these industry processes and associated consumer messaging may affect the ability of end-users to acquire fixed-line carriage services. For example, in the initial phase of the rollout, end-users of special services will need to be made aware of the potential for them to continue to acquire these services over the copper network (until the relevant special service disconnection date arises). In addition, service providers will need to implement workable processes to ensure that all such services are appropriately tagged and excluded from the managed disconnection process.

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<sup>45</sup> A Schedule of the Subscriber Agreement, available at:  
<http://www.accc.gov.au/content/index.phtml/itemId/1003999>

<sup>46</sup> Migration plan, clause 6 and Sch.1.

## 4.2 Managed Disconnection of Copper and HFC Services (Required Measures 2 and 3)

On the disconnection date for a roll out region, Telstra will commence the disconnection of all remaining active copper and HFC services where a disconnection order has not been made by a retail or a wholesale customer.<sup>47</sup> The migration plan requires Telstra to develop a required measure outlining how it will facilitate this disconnection in an efficient and timely manner.

### 4.2.1 Regulatory requirements

The migration plan contains a number of requirements for required measures 2 and 3. In particular:

- Clause 14.4 requires Telstra to notify wholesale customers as soon as reasonably practicable after the disconnection date of those premises subject to managed disconnection.
- Clause 15 outlines the types of premises that will be subject to managed disconnection such as ‘in-train order’ and ‘added’ premises and those where disconnection is prohibited by law.
- Schedule 3 sets out principles for the development of the managed disconnection processes.

9. <i>Do the new processes developed to facilitate managed disconnection comply with the requirements of the migration plan and the migration plan principles?</i>
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## 4.3 Building Copper Paths to Supply Special Services and Special Service Inputs (Required Measure 4)

Clause 17 of the migration plan prevents Telstra from supplying copper services or building infrastructure to facilitate the supply to premises that are ‘NBN serviceable’.<sup>48</sup> However, there are a number of specific types of copper services—‘special services’—that may not have an appropriate NBN-based alternative for RSPs to migrate their end-users to.<sup>49</sup> A list of the special services is provided in Schedule 4 of the migration plan and includes Integrated Digital Services Network (ISDN) services. The migration plan provides that Telstra must continue to provide ‘special services’ and any underlying Unconditioned Local Loop Service (ULLS) input over which they have been provisioned until the relevant disconnection date for that special service category arises.

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<sup>47</sup> Migration plan, clause 14.1.

<sup>48</sup> A premise is ‘NBN Serviceable’ when it is physically connected to the NBN fibre network.

<sup>49</sup> Migration plan, p. 30 (Explanatory Note: Disconnection of Direct Special Services).

### 4.3.1 Regulatory requirements

Clause 21.2 of the migration plan requires Telstra to prepare a required measure that sets out the process for Telstra to build copper paths to premises in order to supply special services. Special services are classes of copper based services that do not have fibre based products that RSPs can use to provide comparable services over the NBN.

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| 10. <i>Do the new process developed to facilitate the building of copper paths to supply special services and special service inputs comply with the requirements of the migration plan and the migration plan principles?</i> |
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## Attachment A – Required Measures and Relevant Migration Plan Principles and Migration Plan Clauses

<b>Required Measure 2:</b> Process for Managed Disconnection of Copper Services (which are not Special Services) on the Disconnection Date	
<b><i>Migration plan principles</i></b> <ul style="list-style-type: none"> <li>▪ Section 8 – Disconnection of carriage services (General principle)</li> <li>▪ Section 9 – Disconnection of carriage services using copper networks</li> <li>▪ Section 11 – Coordination of connection and disconnection</li> <li>▪ Section 14 – Maintaining soft dial tone</li> <li>▪ Section 18 – Timing of disconnection orders</li> <li>▪ Section 19 – Control of disconnection timing and processes</li> <li>▪ Section 21 – Equivalence regarding disconnecting Telstra retail business units and wholesale customers (General principle)</li> <li>▪ Section 23 – Use of adequate processes (General principle)</li> </ul>	<b><i>Migration plan clauses</i></b> <ul style="list-style-type: none"> <li>▪ Clause 14 – Managed Disconnection commencing at the Disconnection Date</li> <li>▪ Clause 15 – Types of Premises and related Disconnection Windows</li> <li>▪ Clause 18 – Temporary Reconnection</li> <li>▪ Clause 20 – Soft dial tone</li> <li>▪ Schedule 1 – Telstra existing standard process for disconnection of Copper Services (other than Special Services)</li> <li>▪ Schedule 3 – Principles for Managed Disconnection immediately following the Disconnection Date</li> </ul>
<b>Required Measure 3:</b> Process for Managed Disconnection of HFC Services	
<b><i>Migration plan principles</i></b> <ul style="list-style-type: none"> <li>▪ Section 10 – disconnection of carriage services using hybrid fibre-coaxial networks</li> </ul>	<b><i>Migration plan requirements</i></b> <ul style="list-style-type: none"> <li>▪ Schedule 2 – Telstra existing standard process for disconnection of HFC Services</li> </ul>

<b>Required Measure 4:</b> Processes for Telstra to build Copper Paths at Premises which had previously been permanently disconnected, in order to supply Special Services and Special Service Inputs to that Premises.	
<p><b><i>Migration plan principles</i></b></p> <ul style="list-style-type: none"> <li>▪ As above for Required Measure 2 except for Section 14</li> <li>▪ Section 13 – special services</li> </ul>	<p><b><i>Migration plan requirements</i></b></p> <ul style="list-style-type: none"> <li>▪ Clause 14 – Managed Disconnection commencing at the Disconnection Date</li> <li>▪ Clause 15 – Types of Premises and related Disconnection Windows</li> <li>▪ Clause 16 - Disconnection of all Premises to be completed by the Designated Day</li> <li>▪ Clause 17 - No supply of new Copper Services and HFC Services after a Premises becomes NBN Serviceable</li> <li>▪ Clause 18 – Temporary Reconnection</li> <li>▪ Clause 21 – Special Services</li> <li>▪ Schedule 4 – Special Services</li> </ul>
<b>Required Measure 6:</b> The NBN Information Security Plan	
<p><b><i>Migration plan principles</i></b></p> <ul style="list-style-type: none"> <li>▪ Section 8 – Disconnection of carriage services (General principle)</li> <li>▪ Section 29 – Protection of information (General principle)</li> </ul>	<p><b><i>Migration plan requirements</i></b></p> <ul style="list-style-type: none"> <li>▪ Clause 24 – Information Security</li> <li>▪ Schedule 6 – Information security principles for development of NBN Co Migration Information security measure</li> </ul>

## Attachment B – Draft NBN ISP Clauses Mapped to Requirements within Schedule 6 of the Migration Plan

Migration Plan, sch. 6 clause	Requirement (what needs to be included in the NBN ISP)	Draft NBN ISP clause or Schedule
<u>NBN ISP will provide for disclosure strictly on a ‘need-to-know’ basis</u>		
2(a)	Detail the measures and processes to be implemented by Telstra in order achieve the objective referred to in clause 1 of this Schedule. <sup>50</sup>	All clauses of the NBN ISP
2(b)(i)	A description of the type of NBN Co Migration Information which Telstra receives from NBN Co and which is therefore subject to the NBN Information Security Plan.	cl. 5, sch. 1
2(b)(ii)	Security measures to be implemented on Telstra’s information storage systems and data systems that will contain NBN Co Migration Information to ensure that there is no unauthorised disclosure of that information, including:	
2(b)(ii)(A)	Process for pre-approving specific members of Telstra Personnel or members of specific groups or teams of Telstra Personnel as authorised recipients of NBN Co Migration Information.	cl. 5.3, cl. 8
2(b)(ii)(B)	Mechanisms used to restrict access to systems containing NBN Co Migration Information to those authorised Personnel only.	cl. 9, cl. 10, sch. 3
2(b)(ii)(C)	System monitoring and compliance activities to be undertaken by Telstra, including a usage audit on at least an annual basis.	cl. 12
2(b)(ii)(D)	Practices, policies and procedures to be implemented by Telstra regarding collection, storage and archiving security of NBN Co Migration Information, including as required to comply with any applicable laws.	cl. 7, cl.9.2, cl. 5.4
2(b)(ii)(E)	Training to be undertaken by Telstra for authorised Personnel in relation to the requirements of the NBN Information Security Plan, including the serious potential consequences of non-compliance.	cl. 10(e), cl. 11, sch. 4

<sup>50</sup> Clause 1 (a) The objective of the NBN Information Security Plan is to set out effective and appropriate measures to ensure that any NBN Co Migration Information: (i) is only disclosed to, and made available for use by, authorised Personnel for a purpose permitted or required by the Definitive Agreements; and (ii) cannot be used or disclosed by Telstra to gain or exploit an unfair commercial advantage over Telstra’s Wholesale Customers.



<u>Permitted use and disclosure - NBN ISP will provide for disclosure strictly on a ‘need-to-know’ basis</u>		
3.1(c)(i)	Identify and authorise Personnel under clause 3.1(a), <sup>51</sup> who need to know NBN Co Migration Information.	cl. 7, cl. 8, cl. 9, sch. 2, sch. 3
3.1(c)(ii)	Ensure that Personnel or pre-approved roles or groups use and disclose NBN Co Migration Information for the purposes and in the circumstances contemplated under clause 3.1(b) <sup>52</sup> and otherwise in accordance with the NBN Information Security Plan.	cl. 7, cl. 8, cl. 10, cl. 11, cl. 12, sch. 3
<u>Permitted use and disclosure - Pre-approval of roles and groups</u>		
3.2(a)	The roles and/or teams within Telstra that will use and disclose particular categories of NBN Co Migration Information; including specifying how that list of roles and teams can be varied from time to time (with the consent of NBN Co and the ACCC).	cl. 8, cl. 10, cl. 12, sch. 2, sch. 3
<u>Permitted use and disclosure - NBN Co Migration Information will not be made available to Retail Business Units</u>		
3.3	Specification that NBN Co Migration Information will not be disclosed to, or made available for use by, Personnel in a Retail Business Unit except: (i) with the prior consent of NBN Co (such consent being received by Telstra only after Commencement); or (ii) in accordance with any purpose specified in the NBN Information Security Plan and approved by the ACCC.	cl. 5, cl. 7, cl. 8, cl. 10, sch. 2.
<u>Compliance and reporting on NBN Co information security</u>		
4 (a)(i)	Specification of effective mechanisms to be used by Telstra to monitor compliance with the NBN Information Security Plan, including the means by which Telstra logs requests made by Personnel to be authorised for access to NBN Co Migration Information.	cl. 12
4 (a)(ii)	Specification of appropriate periodic reporting to the ACCC in respect of any updated processes or procedures described in the NBN Information Security Plan.	cl. 12

<sup>51</sup> Clause 3.1(a): The underlying principle which the NBN Information Security Plan will apply is that NBN Co Migration Information will only be disclosed to, and be made available within Telstra’s information and data systems for use or disclosure: (i) by authorised Personnel; and (ii) strictly on a ‘need to know’ basis.

<sup>52</sup> Clause 3.1(b): The ‘need-to-know’ principle means that the default position under Telstra’s information and data systems will be that Telstra Personnel will not be authorised and will have no access to NBN Co Migration Information unless they establish (either directly or as a consequence of their role or a group which they are a member of being pre-approved) that they ‘need-to-know’ such information for the purposes of: (ii) Telstra performing an agreement with NBN Co; and (i) either: (A) facilitating the connection by NBN Co or its agents of Premises and commencement of supply of Fibre Services using the NBN Co Fibre Network; or (B) disconnecting carriage services from a Separating Network at Premises in a Rollout Region.

4 (b)(i)	Specification of the programs and policies that Telstra will use to educate relevant Personnel about the requirements of the NBN Information Security Plan.	cl. 10, cl. 11, sch. 4
4 (b)(ii)	Specification of the programs and policies that Telstra will use to ensure compliance by Telstra Personnel with the requirements of the NBN Information Security Plan.	cl. 10, cl. 11, sch. 4